

**ORDINANCE NO. 1375
SERIES 2002**

AN ORDINANCE CONCERNING SALES AND USE TAXES.

WHEREAS, as a home rule municipality, the City of Louisville intends to commence self-collection of sales taxes on July 1, 2002; and

WHEREAS, as part of such transition to self-collection of sales taxes, the City desires to repeal and reenact the sales and use tax provisions of the Louisville Municipal Code; and

WHEREAS, as part of such repeal and reenactment, the City desires to set forth additional provisions concerning the collection, administration and enforcement of sales and use taxes, and to standardize certain municipal sales and use tax practices for the convenience of taxpayers and the business community.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF LOUISVILLE, COLORADO:**

Section 1. Chapter 3.20 of the Louisville Municipal Code, entitled "Sales and Use Tax," is hereby repealed and reenacted to read as follows:

Chapter 3.20

SALES AND USE TAX

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PART 1 -- GENERAL PROVISIONS

Sec. 3.20.010. General; legislative intent.

This Chapter shall be known and cited as the “City of Louisville, Colorado, Sales and Use Tax Code.” This Chapter is intended to establish the sales and use tax base and administration for the city. Additionally, this Chapter standardizes certain municipal sales and use tax practices for the convenience of taxpayers and the business community.

Sec. 3.20.020. Definitions.

A. Words and phrases not otherwise defined herein shall have the meanings set forth in C.R.S. § 39-26-102, as it currently exists or may hereafter be amended, and such definitions are incorporated herein by reference.

B. When not clearly otherwise indicated by the context, the following terms, words and phrases as used in this Chapter, shall have the following meanings:

1. “Acquisition charges or costs” include “purchase price,” as defined herein as subsection 19 of this section.
2. “Agricultural commodity” means any agricultural commodity as defined in section 35-28-104 (1), C.R.S.; except that, for purposes of this Chapter, “agricultural commodity” shall also include sugar beets, timber and timber products, oats, malting barley, barley, hops, rice, milo, and any other feed grain.
3. “Auction” means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.
4. “Business” includes all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.
5. “Charitable organization” means any entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of

statements), any political campaign on behalf of any candidate for public office, or any veterans' organization registered under section 501(c)(19) of the "Internal Revenue Code of 1986," as amended, for the purpose of sponsoring a special event, meeting, or other function in the state of Colorado so long as such event, meeting, or function is not part of such organization's regular activities in the state.

6. "Construction materials" or "construction and building materials" means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items that do not remain as an integral or inseparable part of a completed structure of project, are not construction materials.
7. "Cooperative direct mail advertising" means advertising for one or more businesses which is in the form of discount coupons, advertising leaflets, or other printed advertising which are delivered by mail in a single package or bundle to potential customers of such businesses participating in such advertising.
8. "Direct mail advertising materials" means discount coupons, advertising leaflets, and other printed advertising, including, but not limited to, accompanying envelopes and labels.
9. "Doing business in this state" means the selling, leasing, or delivering in this state, or any activity in this state in connection with the selling, leasing, or delivering in this state, of tangible personal property by a retail sale as defined in this section, for use, storage, distribution, or consumption within this state. This term includes, but shall not be limited to, the following acts or methods of transacting business:
 - a. The maintaining within this state, directly or indirectly or by a subsidiary, of an office, distributing house, salesroom or house, warehouse, or other place of business;

- b. The soliciting, either by direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever, of business from persons residing in this state and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in this state for use, consumption, distribution, and storage for use or consumption in this state.
10. "Farm close-out sale" means a sale by auction or private treaty of all tangible personal property of a farmer or rancher previously used by him in carrying on his farming or ranching operations. Unless said farmer or rancher is making or attempting to make full and final disposition of all property used in his farming or ranching operations and is abandoning the said operations on the premises whereon they were previously conducted, such sale shall not be deemed a "farm close-out sale" within the meaning of this Chapter.
 11. "Finance director" means the director of finance and administrative services of the City of Louisville or such other person designated by the city; "finance director" shall also include such person's designee, which may include, but is not limited to, an impartial hearing officer.
 12. "Food" means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (g), as amended, for purposes of the federal food stamp program as defined in 7 U.S.C. sec. 2012 (h), as amended.
 13. "Gross taxable sales" means the total amount received in money, credits, or property, excluding the fair market value of exchanged property which is to be sold thereafter in the usual course of the retailer's business, or other consideration valued in money from sales and purchases at retail within this state, and embraced within the provisions of this Chapter.
 14. "Livestock" means cattle, horses, mules, burros, sheep, lambs, poultry, swine, ostrich, llama, alpaca, and goats, regardless of use, and any other animal which is raised primarily for food, fiber, or hide production. "Livestock" shall also mean "alternative livestock" as defined under section 35-41.5-102, C.R.S. "Livestock" shall not mean a pet animal as defined under section 35-80-102 (10), C.R.S.
 15. "Livestock production facility" means any structure used predominately for the housing, containing, sheltering, or feeding of

livestock, including, without limitation, barns, corrals, feedlots, and swine houses.

16. "Person" includes any individual, firm, limited liability company, partnership, joint venture, corporation, estate, or trust or any group or combination acting as a unit, and the plural as well as the singular number. "Person" also means an individual, corporation, limited liability company, partnership, firm, joint venture, association, estate, trust, receiver, or group acting as a unit and includes the plural as well as the singular number.
17. "Precious metal bullion" means any precious metal, including, but not limited to, gold, silver, platinum, and palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.
18. "Pre-press preparation printing materials" means those tangible products converted to use for a specific print job that are subsequently saved but can only be reused for that same print client on rerun. Title to such pre-press preparation printing materials must pass to an independent customer with the sale of the printed materials, and they must be reusable for their original purpose or a similar purpose after the press run. Examples of "pre-press preparation printing materials" include, but are not limited to, photos, color keys, dies, engravings, light sensitive film or paper, masking sheets of any material, plates, rotogravure cylinders, and proofing samples of any material. No disposable materials or materials consumed to a significant degree are pre-press preparation printing materials for the purposes of this Chapter. Examples of disposable or consumable materials include, but are not limited to, tape, alcohol, glues, adhesives, washes, silicon solutions, pens, markers, and cleaners.
19. "Purchase price" means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this Chapter, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the time and place of the exchange, if:
 - a. Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or
 - b. Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

In the case of the sale or transfer of wireless telecommunication equipment as an inducement to a consumer to enter into or continue a contract for telecommunication services that are taxable pursuant to this Chapter, "purchase price" means and shall be limited to the monetary amount paid by the consumer and shall not reflect any sales commission or other compensation received by the retailer as a result of the consumer entering into or continuing a contract for such telecommunication services. Nothing in this subsection shall be construed to define "purchase price" as it applies to the amount a retailer collects from a consumer who defaults or terminates a contract for telecommunication services.

20. "Retailer" or "vendor" means a person doing a retail business, known to the trade and public as such, and selling to the user or consumer, and not for resale.
21. "Retail sale" includes all sales made within the state except wholesale sales.
22. "Sale" or "sale and purchase" includes installment and credit sales and the exchange of property as well as the sale thereof for money; every such transaction, conditional or otherwise, for a consideration, constituting a sale; and the sale or furnishing of electrical energy, gas, steam, telephone, or telegraph services taxable under the terms of this Chapter. Neither term includes:
 - a. A division of partnership or limited liability company assets among the partners or limited liability company members according to their interests in the partnership or limited liability company;
 - b. The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;
 - c. The transfer of assets of shareholders in the formation or dissolution of professional corporations;
 - d. The dissolution and the pro rata distribution of the corporation's assets to its stockholders;
 - e. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;
 - f. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent by the parent

corporation to a parent corporation or to another subsidiary which is owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

g. A transfer of a limited liability company or partnership interest;

h. The transfer in a reorganization qualifying under section 368 (a) (1) of the "Internal Revenue Code of 1986", as amended;

i. The formation of a limited liability company or partnership by the transfer of assets to the limited liability company or partnership or transfers to a limited liability company or partnership in exchange for proportionate interests in the limited liability company or partnership;

j. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

k. The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this Chapter was paid by the transferor corporation at the time it acquired such assets, except as otherwise provided herein. For the purposes of this paragraph k, a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

In addition to the foregoing, "sale" or "sale and purchase," includes the transaction of furnishing rooms or accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee, assignee, lessee, or person acting in a representative capacity or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, under any concession, permit, right of access, license to use, or other agreement, or otherwise.

Except as otherwise provided in this subsection, the sales tax is imposed on the full purchase price of articles sold after

manufacture or after having been made to order and includes the full purchase price for material used and the service performed in connection therewith, excluding, however, such articles as are otherwise exempted in this Chapter. In connection with the transactions referred to in paragraph k of this subsection 22, the sales tax is imposed only on the amount of any increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation. Except as otherwise provided in this subsection, the sales price is the gross value of all materials, labor, and service, and the profit thereon, included in the price charged to the user or consumer.

23. "School" means an educational institution having a curriculum comparable to grade, grammar, junior high, high school, or college, or any combination thereof, requiring daily attendance, having an enrollment of at least forty students, and charging a tuition fee.
24. "Storage" or "storing" means any keeping or retention of, or exercise of dominion or control over, tangible personal property in this state.
25. "Tangible personal property" means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by section 24-70-102, C.R.S., preprinted newspaper supplements which become attached to or inserted in and distributed with such newspapers, or direct mail advertising materials which are distributed in Colorado by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising.
26. "Tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which the vendor is required to report its collections, as the context may require.
27. "Taxpayer" means any person obligated to collect tax, pay tax, or account for tax, or any combination thereof, under the terms of this Chapter and as the context may require. The term "taxpayer" includes but is not limited to a retailer, a vendor and such other persons as the context may require.
28. "Wholesale sale" means a sale by wholesalers to retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale, and the latter sales shall be deemed retail sales and subject to the

provisions of this Chapter. This term includes sales of all pre-press preparation printing materials, as defined by subsection 18 of this section, which are used by a printer for a specific printing contract where the printed product is sold at retail to a customer accepting delivery within this state.

29. "Wholesaler" means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers, or other wholesalers, for the purpose of resale.

Sec. 3.20.030. Trust status of tax.

A. CITY PROPERTY IN TRUST: All sums of money paid by the consumer to the retailer as taxes imposed by this Chapter shall be and remain public money and the property of the city in the hands of such retailer. Such retailer shall hold the same in trust for the sole use and benefit of the city until paid to the finance director as herein provided. It shall be unlawful for any retailer to fail or refuse to pay to the finance director all such sums.

B. SEGREGATED ACCOUNT: If a retailer is suffering financial difficulty, or is delinquent in making payment of sales tax collected, or is apparently using tax money collected for his own purposes, the finance director may require the trust funds to be kept segregated in a special account at a bank or other financial institution. Withdrawals from said account shall only be payable to the finance director, and the finance director shall be authorized to make withdrawals from said account. Where said account is not kept as required herein, all the property of the taxpayer shall be considered as trust property of the city.

Sec. 3.20.040. Sales tax defined.

Sales tax is the tax collected or required to be collected from a purchaser and remitted by a retailer on taxable retail sales under this Chapter.

Sec. 3.20.050. Use tax defined.

Use tax is the tax paid or required to be paid by a consumer for purchasing and using, storing, distributing or otherwise consuming tangible personal property within the city as taxed under this Chapter.

Sec. 3.20.060. Statute of limitations.

A. ASSESSMENTS, COLLECTIONS AND LIENS: The taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Chapter shall not be assessed nor shall any notice of lien be filed, distraint warrant issued, suit for collection be instituted, or any other action taken to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable. In addition, no lien shall continue after such

period, except for taxes assessed before the expiration of such period, in which case such lien shall continue for only one year after the filing of notice thereof.

B. FALSE AND FRAUDULENT RETURNS: In the case of a false or fraudulent return with intent to evade tax, the tax together with interest and penalties thereon, may be assessed, or proceedings for the collection of such tax may be begun, at any time.

C. EXTENSIONS: Before the expiration of such period of limitation, the taxpayer and the finance director may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon time.

D. FAILURE TO FILE A RETURN: In the case of failure to file a return, the tax, with interest and penalties thereon, may be assessed and collected at any time.

Sec. 3.20.070. Duty to keep records.

A. It is the duty of every taxpayer to keep and preserve for a period of three (3) years such books, accounts and records as may be necessary to determine the amount of the tax the taxpayer is liable to pay or collect under this Chapter. Such books, accounts and records shall include, by way of example and not limitation, original sales and purchase invoices, receipts and related documents.

B. All such books, accounts, records, invoices, receipts and other documents required to be kept hereunder shall be open for examination by the finance director upon demand. If a taxpayer keeps or maintains his books, accounts, records, invoices, receipts, or other documents, or any portion thereof, outside the city, then upon demand of the finance director the taxpayer shall make the same available at a suitable place within the city, to be designated by the finance director, for examination, inspection and audit by the finance director.

Sec. 3.20.080. Amendments.

Except as to the sales tax and use tax rate provided for in this Chapter, the items taxed and exempted from the sales tax and use tax hereunder, and the use of the sales and use tax revenues provided for in this Chapter, the city council may amend, alter, delete or change the provisions of this Chapter by the adoption of an amending ordinance in accordance with law, and such amendment, alteration, deletion or change need not be submitted to the electors of the city for their approval unless otherwise required by the Colorado Constitution.

Sec. 3.20.090. Violation; penalty.

It is unlawful to violate any of the provisions of this Chapter. Any person convicted of violating any of the provisions of this Chapter shall be subject to the

general penalty provisions set forth in Section 1.28.010, unless otherwise expressly provided in this Chapter.

PART 2 -- SALES TAX

Sec. 3.20.200. Levy of tax; rate.

A. There is hereby levied, and there shall be collected and paid, a sales tax equal to three percent (3%) of the purchase price of tangible personal property at retail or the furnishing of services, except that for the ten-year period beginning on January 1, 1994, the amount shall be three and three-eighths ($3\frac{3}{8}$) percent of the purchase price thereof, in accordance with Ordinance 1119 (Series 1993), approved by the registered electors of the city on November 2, 1993.

B. It shall be unlawful for any seller to fail to collect, or any consumer to fail to pay, a tax levied by this Chapter, including the tax on any sale on which exemption is disputed.

Sec. 3.20.210. Property and Services Taxed.

The sales tax is imposed upon the property and services as set forth in this section; provided, however, that no such tax is shall be charged on any sale of seventeen cents (\$0.17) or less.*

A. **TANGIBLE PERSONAL PROPERTY:** The sales tax is imposed upon the purchase price paid or charged upon all sales and purchases of tangible personal property at retail.

B. **EXCHANGED PROPERTY:** In the case of retail sales involving the exchange of property:

1. The sales tax is imposed on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or purchase price, the fair market value of the exchanged property if: (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or (2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

* Persons responsible for collection should note that items G through M below are taxable by the City though exempt from state tax as of the July 1, 2002 effective date of this Chapter.

2. The exchange of three or more vehicles of the same type by any person in any calendar year in transactions subject to the provisions of this Chapter shall be prima facie evidence that such person is engaged in the business of selling vehicles of the type involved in such transactions and that he is thereby subject to any licensing requirements necessary to engage in such activity.

C. TELEPHONE AND TELEGRAPH SERVICES: The sales tax is imposed upon the amount charged for telephone and telegraph services, whether furnished by public or private corporations or enterprises for all intrastate telephone and telegraph service.

D. GAS AND ELECTRIC SERVICES: The sales tax is imposed upon the amount charged for gas and electric service, whether furnished by municipal, public, or private corporations or enterprises, for gas and electricity furnished and sold for commercial consumption and not for resale, upon steam when consumed or used by the purchaser and not resold in original form whether furnished or sold by municipal, public, or private corporations or enterprises.

E. FOOD AND DRINK: The sales tax is imposed upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities. Cover charges shall be included as part of the amount paid for such food or drink. Any retailer selling malt, vinous or spirituous liquors by the drink may include in the sales price the tax levied under this Chapter. However, meals provided to employees of the places mentioned in this subsection E at no charge or at a reduced charge and which are considered as part of their salary, wages, or income shall be exempt from taxation under the provisions of this Chapter.

F. ROOMS AND ACCOMMODATIONS SERVICES: The sales tax is imposed on the entire amount charged to any person for rooms or accommodations as designated in Section 3.20.020.B.22.

G. OCCASIONAL CHARITABLE SALES: The sales tax is imposed upon the amount paid for purchases of all occasional sales by a charitable organization.

H. OTHER FUEL SERVICES: The sales tax is imposed on all sales and purchases of electricity, coal, wood, gas, fuel oil, or coke sold, but not for resale, to occupants of residences, whether owned, leased, or rented by said occupants, for the purpose of operating residential fixtures and appliances which provide light, heat, and power for such residences. For the purposes of this subsection H, "gas" includes natural, manufactured, and liquefied petroleum gas.

I. MACHINERY AND MACHINE TOOLS: The sales tax is imposed upon the amount paid for purchases of machinery or machine tools, or parts thereof, in excess of five hundred dollars to be used in Colorado directly and predominantly in manufacturing tangible personal property, for sale or profit.

J. FOOD: The sales tax is imposed upon the amount paid for all sales and purchases of food as defined in Section 3.20.020.B.12.

K. VENDING MACHINES: The sales tax is imposed upon the purchase price paid or charged upon all vending machine sales and purchases of tangible personal property at retail. The sales tax shall be collected and remitted by the vending machine operator or owner for the retail sale of tangible personal property. However, because of the difficulty in collecting the tax upon each retail sale, the tax shall be calculated upon the gross retail price of the items or articles of tangible personal property that are sold in the coin-operated vending machine or device. The sales tax may be included in the retail price of the individual item sold at retail through the machine.

L. FARM EQUIPMENT: The sales tax is imposed upon the sales and purchases of farm equipment and farm equipment under lease or contract.

M. LOW-EMITTING VEHICLES, POWER SOURCES, AND PARTS: The sales tax is imposed upon the sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources.

Sec. 3.20.220. Exemptions.

The transactions set forth in this section are exempt from the imposition of city sales tax. The burden of proving that any taxpayer is exempt from collecting or paying sales tax shall be on the taxpayer:

A. CONSTRUCTION MATERIALS: The sale of construction and building materials, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the city evidencing that a local use tax has been paid or is required to be paid.

B. AUTOMOTIVE VEHICLES: Automotive vehicles, or any other personal property for which a specific ownership tax has been paid or is payable when such sales meet both of the following conditions:

1. The purchaser is a nonresident of or has his principal place of business outside the limits of the city; and

2. Such personal property is registered or required to be registered outside the limits of the city under the laws of the state.

C. **SALES TAX PAID TO ANOTHER CITY:** The sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city or town, or city and county, equal to or in excess of the sales tax. A credit shall be granted against the sales tax with respect to such transaction equal in amount to the lawfully imposed local sales tax previously paid by the purchaser to such other statutory or home rule city or town, or city and county. The amount of the credit shall not exceed the amount of the sales tax required to be paid pursuant to this Chapter.

D. **FOOD:**

1. The sale of food purchased with food stamps. For the purposes of this subsection, "food" shall have the same meaning as provided in 7 U.S.C. 2012(g), as such section now exists or is hereafter amended.
2. The sale of food purchased with funds provided by the special supplemental food program for women, infants, and children authorized by 42 U.S.C. 1786. For the purposes of this subsection, "food" shall have the same meaning as provided in 42 U.S.C. 1786, as such section now exists or is hereafter amended.

E. **GOVERNMENT, RELIGIOUS & CHARITABLE:** All sales to the United States government, or the state of Colorado, or its institutions, or its political subdivisions in their governmental capacities only, or sales to religious or charitable corporations in the conduct of their regular religious or charitable functions.

Sec. 3.20.230. Credit sales.

Whenever tangible personal property is sold under a conditional sales contract or lease-purchase agreement whereby the retailer retains title as security for all or part of the purchase price or whenever the retailer takes a purchase money security interest on such tangible personal property to secure all or part of the purchase price, the total tax based on the total purchase price shall become immediately due and payable. This tax shall be charged and collected by the retailer. No refund or credit shall be allowed to either party to the transaction in case of repossession.

Sec. 3.20.240. Sales tax license.

A. It shall be unlawful for any person to engage in the business of selling tangible personal property at retail without first having obtained a license therefor. In case business is transacted at one or more separate premises by one person, a separate license for each place of business shall be required. Each license shall be numbered and shall show the name, residence, place, and character of business of the licensee, and shall be posted in a conspicuous place in the place of business for which it is issued.

B. A license shall be granted and renewed only upon application, stating the name and address of the person desiring such a license, the name of the business and the location, and such other facts as the finance director requires. Such license shall be granted and issued by the finance director and shall be in force and effect until December 31 of the year in which it is issued, unless revoked sooner.

C. For each license issued under the provisions of this Chapter, a fee of twenty-five dollars (\$25.00) shall be paid and shall accompany the application. An annual fee of twenty-five dollars (\$25.00) shall be paid for each year or fraction thereof for which such license is issued or renewed. No license shall be issued until the required fee has been paid in full.

D. It shall be the duty of each licensee, on or before January 1 of each year, to obtain a renewal of his license if he remains in the retail business or liable to account for the tax provided for in this Chapter.

E. No license shall be transferable except that a person may move his place of business within the city. Upon moving a place of business within the city, each licensee shall notify the finance director in writing of such change.

F. The finance director may, after a reasonable notice and opportunity for hearing, revoke the license of any person found to have violated any provision of this title.

G. Any person engaged in the business of selling tangible personal property at retail in the city without having secured a license therefor, except as specifically provided in this Chapter, shall be guilty of a violation of this Chapter.

Sec. 3.20.250. Taxpayer responsibilities.

A. The tax imposed by this Chapter shall be in addition to all other taxes imposed by law, except as otherwise provided in this Chapter.

B. It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the sales tax or any part thereof imposed by this Chapter shall be assumed or absorbed by the retailer or

that it shall not be added to the selling price of the property sold or, if added, that it or any part thereof shall be refunded.

C. Except as provided in subsection D of this section, each retailer shall add the tax imposed to the sale price or charge, showing such tax as a separate and distinct item, and when added, such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the retailer until paid, and shall be recoverable at law in the same manner as other debts.

D. The tax schedules promulgated under this Chapter shall be used by such retailer in determining amounts to be included in such sales price. The use of the schedules referred to such section shall not relieve such retailer from liability for payment of the full amount of the tax imposed pursuant to this Chapter.

E. If any retailer during any reporting period shall collect as sales tax an amount in excess of the amount of the sales tax imposed under this Chapter, the retailer shall remit to the finance director the full amount of the sales tax imposed under this Chapter and also all excess amounts.

Sec. 3.20.260. Filing returns; due dates.

A. Every taxpayer shall file a return, whether or not tax is due, and remit any tax due to the city on or before the twentieth (20th) day of the month following the reporting period.

B. A retailer engaged in business in the city at two (2) or more locations, whether inside or outside the city, who collects sales tax, may file one return for all such locations, when accompanied by a supplemental schedule showing the gross sales and net taxable sales for each location.

C. For good cause shown in a written request of a taxpayer the finance director may extend the time for making returns and paying tax due. The request must be received by the finance director no later than two days prior to the date the return is due.

D. No person shall make any false statement in connection with a return.

E. Unless otherwise approved by the finance director, taxpayers shall file returns and pay tax as follows:

1. A taxpayer whose monthly tax due is one hundred dollars (\$100.00) or more shall file returns and pay tax monthly.

2. A taxpayer whose monthly tax due is less than one hundred dollars (\$100.00) may pay tax quarterly.
 3. If a monthly filer drops to less than \$100 per month for an entire calendar year, the annual filing status will change to quarterly for the subsequent calendar year. The annual filing status will be determined by the first full month of tax collected. If a quarterly filer exceeds \$300 per quarter for an entire calendar year, the status will change to monthly in the subsequent calendar year.
- F. The reporting period for a final return shall end on the date of the transfer of ownership of the business.
- G. Timely payment shall be evidenced by the postmark date if mailed; otherwise, timely payment shall be evidenced by the date on the receipt issued by the city cashier.
- H. Any due date, payment date, or deadline for paying tax due, providing information or taking other action which falls on a Saturday, Sunday or legal holiday recognized by either the Federal government or State of Colorado shall be extended to the first business day following such weekend or holiday.
- I. The finance director may, upon advance written request of the taxpayer and in the director's sole discretion, authorize the filing of returns and payment of taxes at such intervals as will better accommodate the convenience of the taxpayer. The finance director may grant such request if it is determined, in the finance director's sole discretion, that the collection of the tax will not be jeopardized, that the realization of amounts owed will not be delayed, and that administrative hardship to the city will not be caused by reason of the granting of such request. Authorization for such alternate method of reporting may be revoked by the finance director if the taxpayer becomes delinquent or if the finance director otherwise determines in the director's sole discretion that such alternative method will jeopardize collection of the tax, result in delay of amounts owed, or otherwise cause administrative hardship to the city. Immediately following notice of such revocation, the taxpayer shall file returns and pay tax as otherwise required by this Chapter.

Sec. 3.20.270. Deductions and credits; vendor's fee.

- A. BAD DEBTS: Taxes paid on gross taxable sales represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax provided in this Chapter, but if any such accounts are thereafter collected by the taxpayer, then a tax shall be paid upon the amounts so collected.

B. RETURNED GOODS: Taxes paid on the amount equal to the sale price of property returned by the consumer when the full sale price including the tax levied is refunded, either in cash or by credit, may be credited upon a subsequent payment of the tax provided in this Chapter, but a tax shall be paid on any resale of such goods.

D. VENDOR'S FEE: The vendor shall be entitled to withhold an amount equal to the lesser of three and one-third percent (3-1/3%) of the amount of the tax to be remitted by the vendor under this Chapter, or one hundred dollars (\$100.00), to cover the vendor's expense in the collection and remittance of said tax. If any vendor is delinquent in remitting said tax, the vendor shall not be allowed to retain any amount to cover his expense in collecting and remitting said tax, and an amount equal to the full tax amount shall be remitted to the finance director by any such delinquent vendor.

Sec. 3.20.280. Acquisition, inception and cessation of business.

A. SELLER'S RESPONSIBILITIES: Any person engaged in business in the city who sells such business shall file a final return. The reporting period for such return shall end on the date of the transfer of ownership of the business. However, the seller shall remain and be held liable for any unpaid taxes due.

B. PURCHASER'S RESPONSIBILITIES: Any person who purchases an existing business shall be responsible for determining the total tax liability of that business, including any delinquencies that may exist, and shall withhold from the initial purchase payment an amount sufficient to cover any such tax liability, unless the former owner produces a receipt from the city showing that all tax due has been paid or a certificate from the city that there is no tax due. Any amount so withheld shall be paid to the city within ten (10) days of the date of the sale of the business. Any purchaser who fails to withhold such tax due or fails to pay to the city the amount so withheld within the ten (10) day period allowed shall be held jointly and severally liable with seller for any unpaid tax due.

PART 3 – USE TAX

Sec. 3.20.300. Levy of tax; rate.

There is imposed and there shall be paid and collected a use tax:

A. Upon the privilege of using or consuming within the city, construction and building materials purchased at retail for use in connection with commercial, industrial or other nonresidential construction or building projects;

B. For a nine-year period beginning January 1, 1995, upon the privilege of using or consuming within the city, construction and building materials purchased at retail for use in connection with residential construction or building projects in accordance with Ordinance 1157 (Series 1994); and

C. Upon the privilege of storing, using or consuming within the city, any motor and other vehicles, purchased at retail on which registration is required.

D. All use tax shall be in the amount of three percent (3%) of the purchase price thereof, except that, for a ten-year period beginning on January 1, 1994, the amount shall be three and three-eighths percent (3 $\frac{3}{8}$ %) of the purchase price thereof, in accordance with Ordinance 1119 (Series 1993), approved by the registered electors of the city on November 2, 1993.

Sec. 3.20.310. Exemptions.

The following are exempt from the imposition of city use tax:

A. SALES TAXED ITEMS: The storage, use, or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by the city;

B. RESALE: The storage, use, or consumption of any tangible personal property purchased for resale in the city, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;

C. TEMPORARY NONRESIDENT USE: The storage, use, or consumption of tangible personal property brought into the city by a nonresident thereof for his own storage, use, or consumption while temporarily within the city;

D. GOVERNMENT, RELIGIOUS & CHARITABLE: The storage, use, or consumption of tangible personal property by the United States government, or the state of Colorado, or its institutions, or its political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

E. WHOLESALE TRANSACTIONS: The storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished and the container, label, or the furnished shipping case thereof;

F. OTHER LAWFUL TAX PAID: The storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule town, city, or city and county equal to or in excess of that imposed by this Chapter. A credit shall be granted against the use tax imposed by this Chapter with respect to a person's storage, use, or consumption in the city of tangible personal property purchased by him in a previous statutory or home rule town, city, or city and county. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule town, city, or city and county on his purchase or use of the property. The amount of the credit shall not exceed the amount of the use tax.

G. NONRESIDENT ACQUIRING RESIDENCY: The storage, use, or consumption of tangible personal property and household effects acquired outside of the city, and brought into it by a nonresident acquiring residency;

H. CERTAIN NONRESIDENT VEHICLES: The storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the city, and he purchased the vehicle outside of the city, for use outside the city, and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled, and licensed said motor vehicle outside of city;

I. STORAGE: The storage of construction and building materials.

Sec. 3.20.320. Motor and other vehicles; collection.

A. The use tax shall apply to the storage, use or consumption of every motor or other vehicle for which registration is required by the laws of the state. No registration shall be made of any motor or other vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the department of revenue of the state or its authorized agents, until any use tax due upon the storage, use or consumption thereof has been paid.

B. The use tax on motor or other vehicles shall be collected by the authorized agent of the county, pursuant to agreement between the city and the county, execution of which agreement is authorized. The proceeds of the use tax on motor or other vehicles shall be paid to the city periodically in accordance with such agreement.

Sec. 3.20.330. Construction and building materials; collection, administration, and enforcement.

A. For construction and building materials, the use tax imposed by this Chapter shall be collected in full prior to issuance of a building permit. The use tax shall be collected by the City of Louisville Building Department, as the designee of the finance director, or by another designee of the director.

B. For purposes of determining the use tax for construction and building materials, fifty (50%) of the estimated general contract costs and fifty percent (50%) of the estimated mechanical contract costs shall be deemed to be the purchase price of such construction and building materials.

PART 4 – ADMINISTRATION AND ENFORCEMENT

Sec. 3.20.400. Authority of the Finance Director.

The administration of this Chapter is vested in the finance director. The finance director may utilize the director's designees, including but not limited to auditors, accountants, attorneys and hearing officers, in the administration of all or any of the provisions of this Chapter and in specific or all cases. The finance director shall have all powers necessary and convenient to the administration of this Chapter, including but not limited to the following:

A. **FORMS AND PROCEDURES.** The finance director shall prescribe forms, administrative procedures and schedules, consistent with the provisions of this Chapter, for the ascertainment, assessment and collection of the tax.

B. **REGULATIONS.** The finance director may formulate for adoption by resolution of city council regulations to effectuate the purpose of this Chapter.

C. **ADDITIONAL INFORMATION.** The finance director may require any person to make additional returns, render statements, furnish records, or make information reports to determine whether or not such person is liable for payment or collection of the tax.

D. **SUBPOENAS.** The finance director may issue a subpoena to command a person to attend and give testimony or to produce books, accounts and records.

1. Any subpoena issued under the terms of this Chapter shall be served as set forth in the Colorado Rules of Civil Procedure, including the payment of witness fees. When the witness is subpoenaed at the insistence of the city, such fees shall be paid by the city. When a witness is subpoenaed at the insistence of the taxpayer, the cost of service of the subpoena and the fee shall be paid by the taxpayer.
2. It shall be unlawful to fail to attend, give testimony or to produce books, accounts and records as commanded in a duly issued and served subpoena. In addition to the imposition of penalties for

violation of this section, the municipal court of the city is empowered to issue an order requiring compliance with the subpoena, and such order shall be enforceable by contempt proceedings.

E. OATHS. The finance director is authorized to administer oaths and take testimony at any hearing held pursuant to this Chapter.

F. PARTIAL PAYMENTS. The finance director may accept any partial payment made and apply such payments towards the amounts due. Deposit of such payments shall not in any way imply that the remaining balance is or has been abated. Partial payments shall be applied to the outstanding balance in the following order: First to any penalties owed; next to interest accrued; then to the principal amount.

G. NOTICES. Notices required by this Chapter shall be in writing and delivered in person or sent postage paid by first class mail, to the last known address of the taxpayer.

Sec. 3.20.405. Audit of records; coordinated audit.

A. A taxpayer licensed with the city under this Chapter, and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided for herein.

B. Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the finance director, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a consent to the extension of the period of limitation upon the city's right to recover amounts owed for the audit period.

C. Except as provided in this section, any taxpayer that submits a complete request for a coordinated audit and consents to the extension of any applicable periods of limitation may be audited by the city during the twelve (12) months after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

D. If the city desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to subsection B of this section, then the finance director shall so notify the financial officer of the

municipality whose notice of audit prompted the taxpayer's request. The finance director shall provide such notice within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The finance director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

E. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the city, the finance director shall facilitate arrangements between the city and other municipalities to minimize, whenever practicable, the number of auditors who will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

F. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the city, the finance director shall, once arrangements for the coordinated audit between the city and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The finance director shall also establish a schedule for the coordinated audit.

G. The coordinated audit procedure set forth in this section shall not apply:

1. When the proposed audit is a jeopardy audit in connection with a jeopardy assessment under this Chapter;
2. When a taxpayer refuses to promptly sign a consent to the extension of the period of limitation upon the city's right to recover amounts owed for the audit period.

Sec. 3.20.410. Inter-city claims for recovery.

A. The intent of this section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or retailer to correctly pay, collect, and remit sales and use taxes to the city.

B. As used herein, "claim for recovery" means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

C. When it is determined by the finance director of the city that sales or use tax, or both, owed to the city have been reported and paid to another municipality, the city shall promptly notify the retailer that taxes are being improperly collected or remitted, or both, and that as of the date the notice is mailed, the retailer must cease improper tax collections or remittances, or both.

D. The city may make a written claim for recovery directly to the municipality that received tax, penalty or interest, or any combination thereof, owed to the city, or, in the alternative, may institute procedures for collection of the tax from the taxpayer. The decision to make a claim for recovery lies in the sole discretion of the city. Any claim for recovery made to a municipality shall include a properly executed release of claim from the taxpayer releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the claim, and a request that the municipality approve or deny, in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the city submits a claim for recovery may, for good cause, request and extension of time to investigate the claim, and approval of such extension by the city shall not be unreasonably withheld.

E. Within ninety (90) days after receipt of a claim for recovery, the city shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received and shall notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the city shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a taxpayer, the check shall be made to the parties jointly. Denial of a claim of recovery may only be made for good cause.

F. The city may deny a claim on the grounds that it has previously paid a claim for recovery arising out of an audit of the taxpayer.

G. The period subject to a claim for recovery shall be limited to the thirty-six (36) month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery.

Sec. 3.20.415. Tax information confidential.

A. All specific information gained under the provision of this Chapter which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the city and its officers, employees and legal representatives as confidential.

B. Except in accordance with judicial order or as otherwise provided by law, the finance director shall not divulge or make known in any way any

financial information obtained from any investigation conducted by the finance director, or disclosed in any document, report or return filed under the provisions of this Chapter.

C. The persons charged with the custody of such documents, reports, investigations and returns filed pursuant to this Chapter shall not be required to produce any of them or evidence of any matters contained therein in any action or proceeding in any court, except on behalf of the finance director in any action or proceeding under the provisions of this Chapter to which the finance director or the city is a party, or on behalf of any party to an action or proceeding under the provisions of this Chapter when the report of facts shown thereby is directly involved in such action or proceeding, or pursuant to any judicial order in which event the court may require the production of and may admit in evidence so much of such returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

D. No provision of this section shall be construed to prohibit the delivery to a person or their duly authorized representative of a copy of any application, report, return or any other document kept, filed or maintained in connection with such person's tax liability. Copies of such documents may be certified by the finance director and when so certified shall be evidence equal with the originals and may be received as evidence of their contents.

E. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular report or returns and the contents thereof, nor to prohibit the inspection of any documents by the city attorney or any other legal representatives of the city.

F. Notwithstanding the provisions of this section, the finance director may furnish to the taxing officials of the state or its political subdivisions, any other state or its subdivisions, or the United States any information contained in any application, report, return or any other document if the recipient jurisdiction agrees with the finance director to grant similar privileges to the city and if such information is to be used by the jurisdiction only for tax related purposes.

Sec. 3.20.420. Overpayment of tax.

A. OVERPAYMENT AS DETERMINED FROM RETURN: If the amount remitted with the return is more than the tax due as computed from information in such return, the taxpayer shall be notified.

1. If the overpayment is ten dollars (\$10.00) or more, a notice of overpayment will be issued. After examining such notice, the taxpayer may submit a claim for refund, report the correct tax due by filing an amended return by the end of the next reporting period, or credit the overpayment to the tax due for the next

reporting period. No refund of such overpayment shall be paid unless a signed claim for refund is submitted on or before the thirtieth (30th) day after the date of notice of overpayment.

2. If the overpayment is less than ten dollars (\$10.00), it shall be credited to the tax due for the next reporting period.

B. OVERPAYMENT DETERMINED THROUGH AUDIT: If the city ascertains through an audit of a taxpayer's records, that the tax due is less than the full amount paid, a notice of overpayment shall be issued. After examining such notice the taxpayer may either file a claim for refund or report the correct tax due by filing an amended return. No refund of such overpayment shall be made unless the claim is submitted to the finance director within thirty (30) days of the date of the notice of overpayment.

C. RECOVERY OF REFUND: The finance director is authorized to bring any appropriate action for recovery of any refund obtained unlawfully. A conviction of a violation of section 3.20.445.B or 3.20.445.C shall constitute prima facie evidence that all refunds received pursuant to the filing which contained the false statement were obtained unlawfully.

Sec. 3.20.425. Assessment of taxes.

A. If any taxpayer fails, neglects or refuses to collect the tax, or to make a return, or to pay in full the tax required by this Chapter, then the finance director, based on such information as is available, shall make an estimate of the tax due. In addition to the estimated tax, there shall be added penalties and interest as provided in this Chapter.

B. The finance director shall give the delinquent taxpayer written notice of determination, assessment and demand for payment, which notice shall be served personally or by certified mail, and which assessment of the deficiency amount shall be due and payable twenty (20) days after service or mailing of such notice. If such tax deficiency amount, penalty and interest is not paid, or no request for hearing under this Chapter is made, within twenty (20) days after the notice of determination, assessment and demand for payment is mailed or personally delivered to the taxpayer, the right of protest of such amount shall be considered waived and such assessment shall be final.

C. An appeal of a notice of assessment issued to a taxpayer for failure to file a return, or underpayment of tax owed, or as a result of an audit, shall be submitted in writing to the finance director within twenty (20) days from the date of the notice of assessment. Any such appeal shall identify the amount of the tax disputed and the specific grounds for the appeal.

Sec. 3.20.430. Penalties and interest for failure to file tax return or pay tax.

A. INTEREST ON UNDERPAYMENT, NONPAYMENT, OR EXTENSIONS OF TIME FOR PAYMENT OF TAX: If any amount of sales or use tax due under this Chapter is not paid on or before the last date prescribed for payment, interest on such amount shall be imposed and paid at the rate of one percent (1%) per month. Such interest shall accrue from the date such payment is overdue to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued by the finance director. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises.

1. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.
2. Interest prescribed pursuant to this section on any sales or use tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected.

B. PENALTY FOR DEFICIENCY DUE TO NEGLIGENCE: If any part of the deficiency in payment of the sales or use tax is due to negligence, or to intentional disregard of the ordinances or rules and regulations of the city, with knowledge thereof but without intent to defraud, then there shall be added a penalty of fifteen dollars (\$15.00) or ten percent (10%) of the total amount of the deficiency, whichever is greater. This penalty shall be in addition to interest at the rate imposed pursuant to this section.

C. PENALTY FOR DEFICIENCY DUE TO FRAUD: If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added a penalty one hundred percent (100%) of the total amount of the deficiency. This penalty shall be in addition to interest at the rate imposed pursuant to this section.

D. PENALTY FOR RECURRING FAILURE: Notwithstanding any other provision of this section to the contrary, the penalty imposed upon a taxpayer who is delinquent without good cause for three (3) or more consecutive filing periods shall be fifty dollars (\$50.00) or fifty percent (50%) of the tax due, whichever is greater, calculated on all amounts due and outstanding on the last date for payment for amounts collected during the third filing period.

E. **PAYMENT OF PENALTIES AND INTEREST.** Penalties and interest as prescribed under this section shall become due and payable twenty (20) days after written demand by the finance director. Penalties and interest shall be assessed, collected and paid in the same manner as the tax to which the penalties and interest are applicable.

Sec. 3.20.435. Additional corporate and partnership penalty.

In addition to the personal liability provided by this Chapter, all officers of a corporation, and all members of a partnership or other entity required to collect, account for, and pay over any tax administered by this Chapter who willfully fail to collect, account for, or pay over such tax or who willfully attempt in any manner to evade or defeat any such tax, or the payment thereof, are subject to, in addition to other penalties provided by law, a penalty equal to one hundred fifty percent (150%) of the total amount of the tax not collected, accounted for, paid over, or otherwise evaded. An officer of a corporation or a member of a partnership or other entity shall be deemed to be subject to this section if the corporation, partnership or other entity is subject to filing returns or paying taxes administered by this Chapter and if such officer or member voluntarily or at the direction of his superiors assumes the duties or responsibilities of complying with the provisions of any tax administered by this Chapter on behalf of the corporation, partnership or other entity.

Sec. 3.20.440. Finance director may waive penalty.

The finance director is hereby authorized to waive, for good cause shown, any penalty assessed in this Chapter, and for the purpose of this section, interest imposed in excess of eighteen percent (18%) per annum shall be deemed a penalty.

Sec. 3.20.445. Unlawful acts.

It shall be unlawful for any retailer, consumer or any other person subject to this Chapter:

- A. To fail to make any required return by the due date;
- B. To make any false or fraudulent return or other filing under this Chapter;
- C. To make any false statements in any return or in any other filing permitted or required by this Chapter;
- D. To fail to make payment to the finance director by the due date of any taxes collected or due the city, or any interest or penalty due the city;

E. To evade the collection or payment of any taxes collected or due the city or the payment of interest or penalty due the city;

F. To fail to pay by the due date such tax, interest, penalty;

G. To aid or abet another in any attempt to evade payment of such tax, interest, or penalty;

H. To issue to the city a check in payment of any taxes collected or due the city or in payment of penalty or interest due the city, which check is dishonored by the drawee of the check. In any prosecution for a violation of this subsection, introduction of the check dishonored by the drawee, bearing notice of such dishonor from the drawee, shall constitute in evidence a prima facie showing that such check was issued by the drawer at a time when the drawer had on deposit with the drawee insufficient funds to allow the drawee to honor the check on presentment; or

I. To violate any other provision of this Chapter.

Sec. 3.20.450. Payment by cash or guaranteed funds.

When any person liable for the payment of a tax imposed by this Chapter has issued to the city three (3) or more checks dishonored by the drawee on account of insufficient funds or for any reason whatsoever, then the finance director may require that such person pay any taxes collected for or due to the city or any penalty or interest due to the city by cash or funds in such other form that will in the discretion of the finance director guarantee payment of the tax, penalty or interest to the city.

Sec. 3.20.455. Cost of collection.

If any person liable for the payment of a tax imposed by this Chapter has repeatedly failed, neglected, or refused to pay the same within the time specified for such payment, and the finance director has been required to exercise enforcement proceedings three (3) or more times through the issuance of a Notice of Determination, Assessment and Demand for Payment to enforce collection of any such taxes due, the finance director is hereby authorized to assess and collect, in addition to taxes, interest and penalties due, such additional amounts as are necessary to compensate the city for administrative and collection costs incurred in collecting such delinquent taxes. The finance director may abate all or a portion of such administrative and collection costs for good cause shown.

Sec. 3.20.460. Sales and Use tax constitute lien.

A. The tax imposed by this Chapter, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall

be, and until paid remain a first and prior lien superior to all other liens upon the tangible personal property sold, purchased, stored, used, distributed or consumed, as well as upon the goods, merchandise, furniture and fixtures, tools, equipment, cash, bank accounts and accounts receivable, of any retailer, or used by any retailer in conducting his retail business under lease, title retaining contract or other contract arrangement, within the city.

B. Said lien shall take precedence on all such property over other liens or claims of whatsoever kind or nature, except that a lien asserted upon real property for amounts imposed under this Chapter shall be subject to a valid mortgage or other liens of record on and prior to the recording of notice as required herein.

C. If any taxes, penalty or interest imposed by this Chapter and shown by return filed by a taxpayer or as shown by assessments duly made as provided in this Chapter are not paid within five (5) days after the same are due, the finance director shall issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof and that the city claims a first and prior lien therefor on the real and tangible personal property of the taxpayer.

D. Such notice shall be on forms prepared by the finance director, and shall be verified by the finance director or an authorized agent thereof, and may be filed in the office of the clerk and recorder of any county in this State in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create a lien on such property in that county and constitute notice thereof. After said notice has been filed, or concurrently therewith or at any time when taxes due are unpaid, whether such notice be filed or not, the finance director may issue a distraint warrant as provided herein.

Sec. 3.20.465. Foreclosure by distraint.

A. Liens created by this Chapter may be foreclosed by seizing under distraint warrant and selling so much of said merchandise, furniture and fixtures, tools and equipment, or other property not otherwise excluded, as may be necessary to discharge said liens. The procedures for foreclosure by distraint shall be as set forth in this section.

B. Except for property that is exempt by state statute from distraint and sale, the finance director may sign and issue a warrant directed to any employee or agent of the city, or any sheriff of any county in Colorado, commanding the distraint and sale of personal property of the taxpayer on which a lien has attached for the payment of tax liability under this Chapter.

1. Such warrant may be issued if the total tax liability is not paid on or before twenty (20) days from the payment date of a notice of

assessment and no protest of such assessment has been timely filed.

2. Such warrant may be issued immediately if a jeopardy assessment and demand for payment has been issued.

C. If the taxpayer does not volunteer entry to the premises, the finance director may apply to the municipal court of the city for a warrant authorizing any employee or agent of the city to search for and distrain property located inside the city to enforce the collection of tax liability.

1. The finance director shall demonstrate to the court that the premises to which entry is sought contains property that is subject to distraint and sale for total tax liability.
2. If a jeopardy assessment and demand for payment has been issued, the finance director shall specify to the court why collection of the total tax liability will be jeopardized.
3. The procedures to be followed in issuing and executing a warrant pursuant to this subsection shall comply with Rule 241 of the Colorado Municipal Court Rules of Procedure.

D. Disposal of Distrainted Property. The disposal of distrainted property shall be as follows:

1. A signed inventory of the property distrainted shall be made by the city or its agent. Prior to the sale the owner or possessor shall be served with a copy of said inventory, a notice of the sum of the total tax liability and related expenses incurred to date, and the time and place of sale.
2. A notice of the time and place of the sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the county where distraint is made or, in lieu thereof and in the discretion of the finance director, the notice shall be posted at the courthouse of the county where distraint is made, and in at least two other places within such county.
3. The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of distraint. The sale may be postponed by the city or agent for no more than ninety (90) days from the date originally fixed for the sale.
4. The property shall be sold at public auction for not less than a fair minimum price, and if the amount bid for the property is less than the fair minimum price so fixed, the property may be declared to be purchased by the city and the city shall file a release of lien

thereof. If the property is purchased by the city, such property may be disposed of in the same manner as other city property.

5. The property may be offered first by bulk bid, then subsequently for bid singularly or by lots, and the city or its agent may accept the higher bid.
6. The property offered for sale may be redeemed if the owner or possessor or other person holding an unperfected chattel mortgage or other right of possession pays the total tax liability and all collection costs no less than twenty-four (24) hours before the sale.
7. The city or its agent shall issue to each purchaser a certificate of sale which shall be prima facie evidence of its right to make the sale and transfer to the purchaser all right, title, and interest of the taxpayer in and to the property sold.
 - a. When the property sold consists of certificates of stock, the certificate of sale shall be notice to any corporation, company, or association to record the transfer on its books and records.
 - b. When the property sold consists of securities or other evidences of debt, the certificate of sale shall be good and valid evidence of title.
8. Any surplus remaining after satisfaction of the total tax liability plus any costs of making the distraint and advertising the sale may be distributed by the city first to other jurisdictions which have filed liens or claims of sales and use or personal property ad valorem taxes, and second to the owner, or such other person having a legal right thereto.
9. The finance director shall submit a written account of the sale to the city manager.

E. Exempt Property: Property of the taxpayer subject to distraint shall include the personal property of the taxpayer and the goods, stock in trade and business fixtures owned or used by any taxpayer including those used under lease, installment sale, or other contract arrangement. Property exempt from distraint and sale shall include following:

1. The personal property of an owner who has made a bona fide lease to a taxpayer shall be exempt if such property can reasonably be identified from the lease description and if the lessee is given no right to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the county clerk and recorder of the county where the property is located or based.

2. Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from such lien except that such lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed the fair market value, or similar interest which is or may be credited to the lessee.
3. Where a lessor and lessee are blood relatives or relatives by law or have twenty-five percent (25%) or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this subsection.

F. Return of the Property: The taxpayer or any person who claims an ownership interest or right of possession in the distrained property may petition the finance director, or the municipal court, if the property was seized pursuant to a warrant issued by the court, for the return of the property.

1. The grounds for return of the property shall be that the person has a perfected interest in such property which is superior to the city's interest or that the property is exempt from the city's lien.
2. The fact finder shall receive evidence on any issue of fact necessary to the decision of the petition. If the fact finder determines, by a preponderance of the evidence, in favor of the taxpayer or other petitioner, the property shall be returned.

Sec. 3.20.470. Jeopardy assessment.

A. If the collection of any tax due from a taxpayer, whether or not previously assessed, will be jeopardized by delay, the finance director may declare the taxable period immediately terminated, determine the tax, and issue a jeopardy assessment and demand for payment. Any tax so assessed shall be due and payable immediately.

B. Enforcement of a jeopardy assessment and demand for payment may be stayed if the taxpayer gives security for payment which is satisfactory to the finance director.

C. If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of tax due, the taxpayer shall pay the tax due as assessed and submit a claim for refund to the city.

Sec. 3.20.475. Recovery by action at law.

A. In addition to other remedies provided in this Chapter, the finance director may treat any such taxes, penalties or interest due and unpaid as a debt due to the city from the taxpayer. If a taxpayer fails to pay the tax, or any portion thereof, or any penalty or interest thereon, when due, the finance director may

recover at law the amount of such taxes, penalties and interest in any county or District Court wherein the taxpayer resides or has a principal place of business that has jurisdiction over the amounts sought to be collected. The return filed by the taxpayer or the notice of determination, assessment and demand for payment issued by the finance director is prima facie proof of the amount due.

B. To recover such taxes, penalties or interest due, the finance director may bring an action in attachment, and a writ of attachment may be issued to the revenue collector, law enforcement officer or sheriff. In any such proceeding, no bond shall be required of the finance director, nor shall any sheriff require of the finance director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The finance director may prosecute appeals in such cases without the necessity or providing bond thereof.

C. In any action affecting title to real estate or the ownership or rights to possession of personal property, the city may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein. In any such action, service of summons upon the finance director or any person in charge of the office of the finance director shall be sufficient service and shall be binding upon the city.

Sec. 3.20.480. Other remedies; compromise

A. No provision of this Chapter shall preclude the city from utilizing any other lawful penalties or other remedies applicable to the collection of sales or use taxes.

B. The finance director shall have the authority to make a compromise and settlement of any claim for sales or use tax due under this Chapter.

PART 5 – DISPUTE RESOLUTION, HEARINGS AND APPEALS

Sec. 3.20.500. Tax disputes.

Retailers engaged in business in the city shall collect and purchasers and consumers shall pay the taxes levied by this Chapter, notwithstanding the fact that the retailer, purchaser or consumer disputes the tax liability or claims an exemption. If the application of the tax to any transaction is disputed, the retailer shall collect and the purchaser or consumer shall pay the tax, and the taxpayer may thereafter apply to the finance director for a refund of such taxes paid as provided in this Chapter.

Sec. 3.20.510. Procedure for refund of disputed tax.

A refund shall be made or credit allowed for tax paid under dispute by any person who claims that the transaction or item was not taxable or claims an exemption as provided in this Chapter. Such refund shall be made by the finance director only after it is determined that such transaction or item is not taxable or that the claimed exemption is warranted, and only after compliance with the following conditions precedent:

A. APPLICATION. An application for a refund of sales or use tax paid under dispute by a purchaser or user who claims an exemption under this Chapter shall be made within sixty (60) days after the date of purchase, storage, use or consumption of the goods or services upon which an exemption is claimed. An application for refund of taxes paid in error or by mistake shall be made within three (3) years after the date of purchase, storage, use or consumption of the goods for which the refund is claimed. Such application must be accompanied by the original paid invoice or sales receipt and must be made upon such forms as shall be prescribed and furnished by the finance director.

B. BURDEN OF PROOF. The burden of proving that any transaction or item is not taxable or is exempt from the tax shall be upon the person asserting such claim under such reasonable requirements of proof as the finance director may prescribe.

C. DECISIONS. Upon receipt of an application, the finance director shall examine the same and shall give written notice to the applicant of the finance director's decision thereon.

Sec. 3.20.520. Administrative hearings.

A. REQUESTS FOR HEARING:

1. Notices of Assessment. An appeal of a Notice of Determination, Assessment and Demand for Payment issued to a retailer or taxpayer for failure to file a return, underpayment of tax owed or as a result of an audit shall be submitted in writing to the finance director within twenty (20) days from the date of the notice of determination, assessment and demand for payment. Any such appeal shall identify the amount of tax disputed and the basis for the appeal.
2. Denial of Refunds. An appeal of the denial of a refund shall be submitted in writing to the finance director within twenty (20) days from the date of the denial of refund and shall identify the amount of the refund requested and the basis for the appeal.

B. CONTENTS OF PETITION: Said petition shall be under oath of the taxpayer and shall set forth:

1. The reason why such hearing should be granted;
2. The amount of tax disputed;
3. Any requested changes;
4. A complete description of documents and tax periods pertaining to the hearing; and
5. The name, address, telephone number and sales or use tax license number of said taxpayer.

C. **TIME AND PLACE OF HEARING:** The finance director shall notify the taxpayer in writing of the time and place for such hearing ten (10) days prior thereto. In all cases, the hearing shall be held in Louisville, Colorado.

D. **CONDUCT OF HEARING:** The finance director or the director's designee may conduct the hearing. The hearing shall be informal and no transcript, rules or evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the city may submit a brief. The city shall hold such hearing and issue the final decision within ninety (90) days after the city's receipt of the taxpayer's written request therefor, except the city may extend such period if a delay in holding a hearing or issuing a decision thereon was occasioned by the taxpayer, but, in any such event, the city shall hold such hearing and issue the decision thereon within one hundred eighty (180) days of the taxpayer's request in writing therefor.

E. **TAX UNDER QUESTION MAY BE ADJUSTED:** Based on the evidence presented at any hearing or filed in support of the taxpayer's contentions at any hearing, the finance director may modify or abate in full the tax, penalty and/or interest questioned at the hearing or may approve a refund.

F. **HEARING DETERMINATION NOTICES:** Upon approval or rejection, in whole or in part, of the claim for refund or upon the finding by the finance director that an assessment in whole or in part has been made properly or improperly against the taxpayer, the finance director shall mail a hearing determination notice to the taxpayer setting forth the amount of claim for refund allowed or denied or the amount of deficiency assessment of taxes found due, stating therein the grounds for allowance or rejection of the petition, in whole or in part. Every decision shall be in writing and notice thereof shall be mailed to the taxpayer within forty-five (45) days following the hearing, but in any event within the time limits prescribed in subsection D of this section.

Sec. 3.20.530. Time limitation for hearing requests.

After the expiration of twenty (20) days from the mailing or personal service of the Notice of Determination, Assessment and Demand for Payment, or of the denial of a refund, if the tax has not been paid and if no request for hearing has been made as provided in section 3.20.520, then the notice of determination, assessment and demand for payment previously mailed or served shall constitute a final assessment of the amount of the tax specified, together with interest, additions to tax and penalties, or the uncontested denial of refund shall constitute a final denial of such refund, as the case may be, except only for such amounts as to which the taxpayer has timely filed protest with the finance director.

Sec. 3.20.540. Appeals; review by District Court.

Any person who is aggrieved by the final decision of the finance director after a hearing may have same reviewed by the district court. The procedure of review shall be in accordance with Rule 106 of the Colorado Rules of Civil Procedure.

PART 6 – USE OF SPECIFIED SALES AND USE TAX REVENUES

Sec. 3.20.600. Sales tax—capital improvement fund.

A. Pursuant to C.R.S. § 29-2-111, there is established a special fund of the city to be known as the “City of Louisville sales tax capital improvements fund” (the “capital improvement fund”). Immediately upon the receipt or collection thereof, the revenues derived from the sales tax shall be deposited or applied in the following manner:

1. One-third of the net revenue (the “pledged revenue”) shall be deposited to the city’s capital improvement fund and used solely for the purposes specified in this section, and such pledged revenue is pledged to the capital improvement fund; and
2. Two-thirds of the net revenue shall be deposited to the city’s general fund or any other fund or account as may be designated by the city council, and used for any municipal purpose.

B. Amounts pledged or deposited to the capital improvement fund shall be used solely to provide capital improvements or to pay debt service on bonds or other obligations issued for the purpose of providing capital improvements, including without limitation, the payment of all costs associated with the construction, installation, acquisition, provision, design, completion, improvement, replacement and financing of capital improvements of every character.

C. Amounts deposited to the capital improvement fund shall not be available to be pledged or expended for any general municipal purpose.

D. Revenues from three-eighths percent (3/8%) sales tax imposed pursuant to Ordinance 1119 (Series 1993) shall be used exclusively for the acquisition of land in and around the city for open space buffer zones, trails, wildlife habitats, wetlands preservation and future parks.

Sec. 3.20.610. Use tax—use of specified revenues.

A. The revenues derived from the use tax shall be deposited as follows:

1. Revenues from the three percent use tax upon the privilege of using or consuming within the city, construction and building materials purchased at retail for use in connection with residential construction or residential building projects shall be deposited in a special fund which shall be spent for purposes determined by the city council to further the acquisition, improvement, or expansion of the educational facilities of the Boulder Valley School District RE-2 serving the citizens of the city and their school-age children, which purposes may include but shall not be limited to the acquisition of land within the boundaries of the city, the site of which shall be acceptable to the city council and to the board of education of the school district, and upon which shall be constructed a new high school.
2. Revenues from three-eighths percent (3/8%) use tax imposed pursuant to Ordinance 1119 (Series 1993), upon the privilege of using or consuming within the city, construction and building materials purchased at retail for use in connection with commercial, industrial or other nonresidential construction or nonresidential building projects, and for the privilege of storing, using or consuming within the city, any motor or other vehicles, purchased at retail on which registration is required, and from the three-eighths percent use tax imposed pursuant to Ordinance 1157 (Series 1994), upon the privilege of using or consuming within the city, construction and building materials purchased at retail for use in residential construction and building materials purchased at retail for use in residential construction or residential building projects, shall be used exclusively for the acquisition of land in and around the city for open space buffer zones, trails, wildlife habitats, wetlands preservation and future parks.

B. Except as herein provided, all revenues from the use tax shall be deposited in such fund or funds as the city council shall designate.

Section 2. If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The City council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that nay one part be declared invalid.

Section 3. The repeal or modification of any provision of the Municipal Code of the City of Louisville by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 4. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 5. This ordinance shall become effective on July 1, 2002.

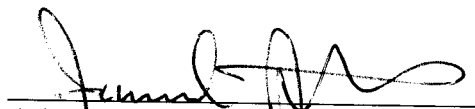
**INTRODUCED, READ, PASSED ON FIRST READING, AND ORDERED
PUBLISHED** this 5th day of March, 2002.




Tom Davidson, Mayor


Nancy Varra, City Clerk

APPROVED AS TO FORM:



Griffiths, Tanoue, Light, Harrington &
Dawes, P.C., City Attorney

PASSED AND ADOPTED ON SECOND AND FINAL READING, this 19th day of March, 2002.



ATTEST:


Tom Davidson, Mayor


Nancy Varra, City Clerk